



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes - OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on August 1, 2008 for a fixed term tenancy that converted to a month to month tenancy beginning August 1, 2009 for the monthly rent of \$760.00 due on 1st of the month and a security deposit of \$380.00 was paid on July 15, 2008 current rent is \$788.12; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 14, 2009 with an effective vacancy date of July 27, 2009 due to \$380.00 in unpaid rent.
- Landlord's ledger of rental charges and payments made by the tenant, showing a long history throughout the tenancy of late rent payments.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the full rent owed for the month of July 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the tenants' rental unit on July 14, 2009 at 6:30 p.m.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The female tenant testified that they placed a money order in the on-site agent's mailbox on July 17, 2009. The tenants submitted a receipt dated July 17, 2009 from Canada Post showing the purchase of a money order in the amount \$380.00.

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The landlord's on site agent acknowledged receipt of the tenant's money order, however, the agent indicated that it was not received in the mail box until July 22, 2009. The agent further testified that he checked the mail box every day as is his habit but did not find the money order until the later date.

The landlords further acknowledged that all rent for August, September and October has been paid. From the testimony the tenant did not pay the full rent on the first of the month of August, September or October. The tenant indicated that due to the employment of the male tenant their income is received on an irregular basis. The tenants were reminded that rent is due on the 1st of each month.

Analysis

I have reviewed all documentary and testimonial evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on July 17, 2009, as per Section 90 of the *Act* where it states a document is deemed to be received on the third day after it is attached to the door of the tenants' rental unit.

Since the notice is deemed to be received on July 17, 2009 and in compliance with the 5 days granted under section 46 (4) of the *Act* the tenants had until July 22, 2009 to pay the outstanding rent provided in the notice. The agent's testimony and submitted ledger show receipt of the payment on July 22, 2009. I find that the tenants have met their obligation under Section 46 (4) of the *Act*.

While the tenant's practice of consistently paying rent late could be considered a breach of a material term of the tenancy agreement this decision deals only with the specific incident as outlined in the 10 Day Notice for Unpaid Rent due on July 1, 2009.

Conclusion

Based on the above findings and testimony, I dismiss the landlord's application for an Order of Possession and a monetary order for any unpaid rent and recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 08, 2009.

Dispute Resolution Officer